

The Examiner's rejection of claims 3, 5, 7, 22, 23, 25, 26, 28, 29, 31-37, 57, 59-63, 67 and 69-71 under 35 USC §102(b) as anticipated or, in the alternative, under 35 USC §103(a) as obvious over WO98/42446 ('446), is in error. Claims 3, 22, 23, 25, 28, 29, 57, 59, 60, 63, 69, 70 and 71 all require that particles are transformed into aerosol form in a first region. The on-line American Heritage Dictionary of the English Language, 4th Edition (copy enclosed), defines aerosol as the gaseous suspension of fine solid or liquid particles. Thus, '446 cannot anticipate this aspect of these claims. As can be seen in Figure 1 of '446, a liquid is dispensed from vessel 15 into the electrostatic applicator 26 to be charged by the high-voltage generator 28 charging the needle 46 (Figure 2). At no point does the liquid become aerosolized prior to coming into contact with a second region having an electrode positioned therein, as the rejected claims require. Thus, '446 cannot anticipate this aspect of claims 3, 22, 23, 25, 28, 29, 57, 59, 60, 63, 69, 70 and 71, nor any claims dependent therefrom.

Furthermore, the '446 patent cannot render obvious these claims. As the Examiner knows, to form an obviousness rejection, all elements of the claims must be taught by the prior art or the prior art must reasonably suggest the modification of the elements found in the claims. The '446 patent does not come even close to meeting this standard, and actually teaches away from the instant claims by describing how to overcome the surface tension of the liquid surface by supplying an electric charge (Abstract). Thus, unless the Examiner can show why one skilled in the art would modify '446 to aerosolize the liquid prior to its coming into contact with the charging needle, the §103 rejection is erroneous.

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Turning to the rejection of claims 1 and 48 for containing subject matter not described in the specification, the Examiner's rejection is in error. The language specifying that the particles have essentially a zero velocity and that the aerosol is essentially stationary are within the spirit and scope of Applicants' invention. The specification adequately discloses that the particles are moved between the second region and the substrate within the depletion zone by applying an alternating electric field. Thus, reading the disclosure in context, it is clear that the particles have no velocity prior to the application of the electrical field. Otherwise, there would be no reason for applying an alternating electric field as required by Applicants' invention! Thus, the Examiner's rejection of claims 1 and 48 is erroneous.

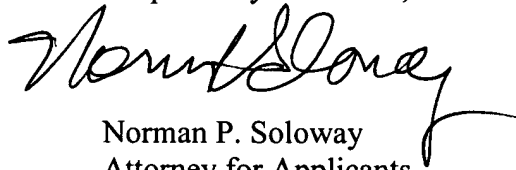
Turning to the rejection of claims 3-9, 14-23, 25-30, 32-37, 48 49, 51-57, 59, 60, 62-67 and 69-71 under 35 USC §112 for failing to set forth subject matter which the Applicants regard as their invention, the Examiner's rejection is similarly erroneous. The discussion in Applicants' last Amendment was directed only to claims 1 and 48 as "require that the charged particles in the second region have essentially zero velocity." The Examiner has taken this statement out of context, and has erroneously applied it to all of the claims.¹ The MPEP states that absent evidence to the contrary, the invention set forth in the claims must be presumed. Since Applicants' statement in the previous Amendment was directed only to claims 1 and 48 and not to the claims as a whole, the Examiner's rejection is erroneous, and the rejection as to these claims should be withdrawn.

It is submitted, absent clear error on the part of the earlier Examiner, the current Examiner should withdraw the art rejections, and allow the Application.

¹ It must be remembered that previously only claims 1 and 48 were art rejected (see the Action of November 15, 2001), and only claims 1 and 48 were amended to include the "zero gravity" language.

Having dealt with the objections raised by the Examiner, the Application is believed to be in order for allowance. Early and favorable action are respectfully requested.


Respectfully submitted,



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CERTIFICATE OF MAILING

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aer·o·sol  [Pronunciation Key](#) (âr'ē-sôl', -sôl')*n.*

1. A gaseous suspension of fine solid or liquid particles.
2.
 - a. A substance, such as paint, detergent, or insecticide, packaged under pressure with a gaseous propellant for release as a spray of fine particles.
 - b. An aerosol bomb.

[aero- + sol(ution).]


Source: *The American Heritage® Dictionary of the English Language, Fourth Edition*

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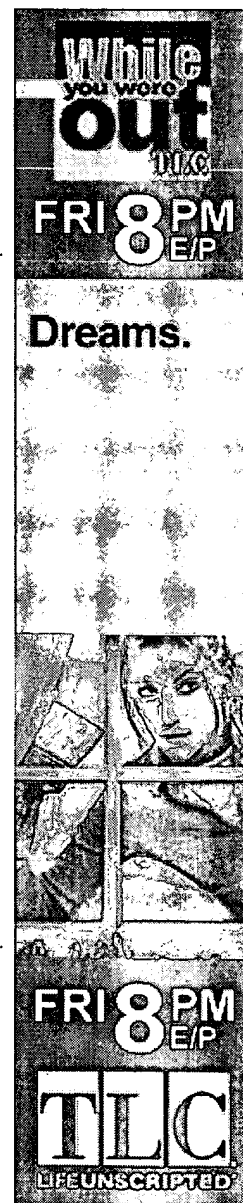
n 1: a cloud of solid or liquid particles in a gas 2: forces a liquid out as a fine spray when a button is pressed [syn:aerosol bomb, spray can]

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aerosol: in CancerWEB's On-line Medical Dictionary

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